IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2962 OF 1992

1) Yashwant Shikshan Sanstha)
Veer Baug, Surur, Taluka Wai)
District Satara)
(Through its Secretary))

2) The Head Master)
Kenjal High School, Kenjal)
Taluka Wai, District Satara.).. Petitioners

Versus

1) Shri Anwarkhan Gauskhan Mokashi)
age about 32 years, Occupation)
Nil, residing at Swargate Police)
Line, Building No.3, Room No.189)
Swargate, Pune 411 042.)

2) The Presiding Officer)
School Tribunal, Pune Region)
Pune.).. Respondents

Mr.A.M. Joshi for the Petitioner.

None present for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2005

ORAL JUDGMENT :

. This Petition challenges the order dated 25th March 1992 passed by the School Tribunal, Pune Region, Pune in Appeal No.190 of 1990 granting reinstatement to Respondent No.1. Initially, Respondent No.1 was appointed as a trained Graduate Teacher on probation.

Approval to his appointment was given by the Government. This approval was for a period of two years. Thereafter, although Respondent No.1 had been appointed on probation for a period of two years, his services were terminated after one year. He was again appointed temporarily for the following academic year. Similarly, several appointment letters were issued to him, each for a period of one year. Ultimately, his services came to an end on 30th April 1989. This decision of the management was challenged by Respondent No.1. The School Tribunal has allowed the appeal filed by Respondent No.1 by coming to the conclusion that the appointment order issued to Respondent No.1 on 30th July 1988 indicates that Respondent No.1 was appointed on probation for a period of two years and that there was no evidence on record to show that he was appointed against a reserved post.

2. Mr.Joshi appearing for the Petitioner contends that the order of the Tribunal must be set aside since it is based on a clear misconception of facts. He submits that Respondent No.1 was initially appointed on probation for two years on 30th July 1988. However, he was not allowed to complete his term on probation and his services were terminated prior to the period of the probation being determined. According to him, Respondent No.1 ought to have challenged the order of

termination at that stage, instead the Respondent No.1 continued to accept appointments for temporary period of one year at a time. His services were in fact terminated on 20th March 1990 with effect from 30th April 1990. He submits that when temporary services of an employee were terminated, the Court should not interfere since the sanction granted to that post was for a temporary period and not against a clear vacancy.

3. On a perusal of the pleadings before the Court and the order of the Tribunal, I find that there is miscarriage of justice. The Tribunal has held that the termination of service of Respondent No.1 was prior to the probationary period being determined and was illegal, overlooking the subsequent appointment orders issued to Respondent No.1. The Tribunal has proceeded on the footing that vide letter dated 30th July 1988 Respondent No.1 was appointed on a clear vacancy for a period of two years and not on probation. There is no dispute that the Petitioners terminated the services of Respondent No.1 within a year i.e. at the end of the academic year 1988-89. Respondent No.1 did not care to challenge his termination of service at the end of the academic year 1988-89. Instead, he chose to accept the temporary appointments made by the Petitioner thereafter. In my view, the submission of the learned Advocate for the Petitioner must be accepted. The order

of the School Tribunal will have to be set aside.

4. Mr.Joshi for the Petitioners submits that it is learnt by the Petitioners that Respondent No.1 is working in another school from the year 1997. Nobody appears for the Respondent No.1. This is probably because Respondent No.1 is not interested in the matter after securing employment in another school.

5. Rule made absolute. No order as to costs.